IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.207 OF 1981

Golden Tobaco Ltd. ..Plaintiffs

Versus

P.N.Abdul Aziz & anr. ..Defendants

Mr.D.B.Mehta i/b Thakordas & Madgaonkar for plffs.

None for defendants

CORAM : P.V.KAKADE, J.

DATE : 17TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendant for recovery of the amount of Rs.1,80,142.83 along with interest at the rate of 18% p.a. on principal amount of Rs.1,33,036.02 from the date of the suit till payment or realisation.

2. The Plaintiff is a manufacture and dealer in Cigarettes. The defendant No.1 is the Sole Proprietor and carrying on the business as a Dealer in Cigarettes.

There were transactions between the parties in which course the goods were supplied to the defendants by the plaintiffs on various occasions and as on 27.1.1979 sum of Rs.1,33,036/= was due and payable by the defendants to the plaintiffs at the foot of the account, therefore, the plaintiffs made several request to the defendants to settle the accounts but defendants denied to do so on one pretext or the other. Hence the suit came to be filed.

3. The defendants have filed their written statement raising various contentions and sought dismissal of the suit. The defendants also made counter claim against the plaintiffs.

4. On the basis of the available pleadings the issues were settled in this suit. The issues and my findings thereon are as follows :

ISSUES	FINDINGS
1. Do the defendants prove that the invoices raised on the defendants include	

cost plus other expenses
like advertising sales
promotion expenses etc.
for and on behalf of the
plaintiff ? In the negative.

2. Do the defendants prove
that they were submitting
statement showing expenses
incurred on behalf of the
plaintiffs for approval ? In the negative.

3. Do the plaintiffs prove
that they were not receiving
any such statements from
the defendants for approval
and they used to approve and
disapproved the expenses
statement submitted by the
defendants ? In the affirmative.

4. Do the defendants prove that
plaintiffs cannot appropriate
security deposit lying with

	the plaintiffs ?	In the negative.
5.	Do the plaintiffs prove that they have maintained an account of defendants in their books of account ?	In the affirmative.
6.	Do the plaintiffs prove that they are entitled to the decree as prayed with interest at 18%?	In the affirmative.
7.	What order and decree ?	As per final order.

5. At the out set it may be noted that though the defendants have filed written statement, they have remained absent at the time of hearing of the suit and therefore the suit proceeded ex-parte against them. On the other hand the plaintiffs have entered the witness box and proved the contents of the affidavit of evidence as well as original documents in support of the claim made out in the Plaint. Therefore, there is no hesitation to hold that the Plaintiffs have proved its

claim.

6. It may be noted that while settling the issues on 1.3.2000 this court noted that the plaintiffs company was Sick Unit and was before the BIFR and hence the counter claim of the defendant was stayed but suit was directed to proceed. The same position is stands till today and therefore the counter claim remained still. In view of this position I pass the following order :

The suit stands decreed with costs.

The defendants shall pay the amount of Rs.1,80,142.83 to the plaintiffs along with interest at the rate 12% p.a. on principal amount of Rs.1,33,036.02 from the date of the suit till payment or realisation.

Certified copy expedited.

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